

Adequate Public Facilities

In many localities, the rate of growth is so rapid that it is outstripping local governments' abilities to provide adequate capacity in schools and other public facilities for the new residents. Many localities have overburdened infrastructure and overcrowded classrooms, even though they are making large investments in new infrastructure and new schools. Much of this problem is due to the fact that growth rates have been much more rapid than local governments anticipated at the time of approving rezonings.

What is an Adequate Public Facilities Ordinance?

An adequate public facilities ordinance is a growth management approach that ties or conditions development approval to the availability and adequacy of public facilities and services, thus ensuring that new development does not take place unless the infrastructure is available to support it. An Adequate Public Facilities Ordinance (APFO) is an ordinance adopted by the local government that allows it to defer the approval of developments based upon a finding by the governing body that public facilities would not be adequate to support the proposed development at build out.

How It Works:

1. The Adequate Public Facilities Ordinance is linked to the locality's Capital Improvement Program, which establishes a schedule of public facility construction over a five or six year period and details how they should be financed.
2. The ordinance identifies the types and levels of service that are needed to permit new development and establishes a policy about when the infrastructure and public services must be in place relative to the impact of development.
3. The development must demonstrate that the required levels of public facilities and services are, or will be, available to the proposed project.
4. Most Adequate Public Facilities Ordinances deal with only one or two types of facilities, such as roads or sewers that have caused critical problems in the community, while others apply such provisions to the full range of public facilities.

What are the components of an effective APF Ordinance?

- Identifies the types of public facilities to be considered.
- Limits the period of time during which the deferral on development imposed by an APFO can be in force.
- Requires the locality to have in place a capital facilities plan to remedy the infrastructure inadequacy that has been the basis for the development deferral.

What does granting APFO authority do?

- Allows localities to time development to coincide with the taxpayers' ability to pay for the schools, roads, public safety and other necessities upon which development is dependent.
- Helps to ensure that development doesn't proceed at the expense of decent schools, public safety, and good neighborhoods.
- Helps to ensure that the huge backlog of approved development in many high growth localities does not bankrupt localities, or taxpayers.
- Ensures that localities that wish to manage growth must adopt capital budgets that will support growth.

What APFO legislation does not do:

- Stop growth.
- Violate constitutionally guaranteed property rights.
- Excuse localities from their obligation to provide rights.
- Impose unfair costs on developers.
- Downzone property.

Potential Benefits:

1. Allows a community to maintain control over the timing and sequence of new development.
2. Forces the community to link its comprehensive land use plan with its capital improvement program, a principle of good planning that is often ignored.
3. Can encourage contiguous or even infill development because of its proximity to existing urban infrastructure and services. To the extent that land in facility-provided areas is limited, it will encourage developers to build at higher densities.

Limitations:

May increase the complexity of the development process and the cost of processing development proposals.

Adequate Public Facilities Ordinance

Article I – Purpose

1.1 Title

This Ordinance shall be known and may be cited as the Adequate Public Facilities Ordinance of the **[Specify Local Government]**.

1.2 Purpose

It is the purpose of the **[Specify Local Government]** to preserve the welfare of current and future **[Specify Local Government]** residents and to facilitate growth in an orderly manner by ensuring that adequate public facilities are available concurrently with the completion of new development. For the purposes of this Ordinance, public facilities shall include road, water, and sewer facilities.

Article II – Definitions

2.1 General

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. Words in the present tense include the future, the singular number includes the plural, and the plural includes the singular. The word “shall” is mandatory and the word “may” is permissive. The word “individual” shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust or the manager, lessee, agent, servant, officer or employee of any of them. The term “Ordinance” shall refer to this Ordinance and all subsequent additions or amendments thereto. The word “adequate” shall mean meeting the established minimum standards in this Ordinance and therefore not preventing the approval of new development. The word “inadequate” shall mean not meeting the established minimum standards in this Ordinance and, therefore, prohibiting the approval of new development. **“[County or Town]” shall mean the [County or Town] of _____, South Carolina. “[County or Town] Council” shall mean the [County or Town] Council of _____, South Carolina. Substitute County where appropriate** The word “approval” shall mean the review process, ultimately responsible for authorizing development, required subject to the **[County or Town]’s or county’s]** relevant land development ordinances handling subdivision and site plan applications. The word “approved” shall mean a subdivision or site plan that has been authorized for development subject to the **[County or Town]’s** relevant land development ordinances handling subdivision and site plan applications. The word “approve” shall mean the act of authorizing the development of a subdivision or site plan subject to the **[County or Town]’s** relevant land development ordinances handling subdivision and site plan applications. Words or phrases not having their dictionary definition in this Ordinance shall have the meanings defined in Section 2.2 of this Ordinance.

2.2 Definitions

2.2.1 Binding Agreement: An agreement with the force of law made between the **[County or Town]** and developer(s) that specifies the developer's responsibility regarding project phasing and financial obligations for public facility improvements that must be taken on in order for road, water, and sewer facilities to be declared adequate for the purposes of this Ordinance.

2.2.2 Capital Improvements Program: If the **[County or Town]** owns the water or sewer system in question then this means the **[County or Town]**'s adopted schedule of all major projects requiring the expenditure of public funds, over and above the **[County or Town]**'s annual operating expenses, for the purchase, construction, or replacement of physical assets for the community. If the **[County or Town]** does not own the water or sewer system in question then this means the schedule of all major projects relative to the capacity of the system in question, as adopted by the water or sewer system's owner.

2.2.3 Developer: Any individual submitting a plan for new development under the provisions of this ordinance.

2.2.4 Development pipeline: Approved, not sunsetted, and unbuilt lots having a legal claim to the **[County or Town]**'s sewer and/or water capacity or development projects of any type that are approved and under construction.

2.2.5 Equivalent Dwelling Unit: The flow of water or wastewater equivalent to the average flow of a single-family residential dwelling unit. Each Equivalent Dwelling Unit shall equal X gallons per day for the purposes of water and Y gallons per day for the purposes of wastewater.

2.2.6 Level of Service: A qualitative measure, ranging from A (free flow) to F (forced), describing operational conditions of a transportation facility. Procedures for determining Level of Service are defined in the current Highway Capacity Manual published by the Transportation Research Board but are subject to modification by SCDOT when applied in this Ordinance.

2.2.7 New Development: New subdivisions or site plans for new construction received for approval by the **[County or Town]** Council after the effective date of this Ordinance.

2.2.8 Phase: A period of construction resulting in the completed construction of a number of units equal to or less than the total number of units of approved new development.

2.2.9 Site Plan: A plan, to scale, showing uses, structures, and other improvements for a parcel as required by the **[County or Town]**'s relevant land development ordinance.

2.2.10 Start of Construction: The point in time commemorating the breaking of ground for the construction of approved new development or a phase of that development

2.2.11 Subdivision: The division of land into two or more lots.

2.2.12 Unit-type: A simple description that implies the use, general size, and general appearance of a structure, including, but not limited to, townhome, single-family, and apartment.

2.2.13 Utility Representative: An individual qualified to check the accuracy of statements regarding the capacity, usage, and estimated future usage of the **[County or Town]**'s water or sewer systems. If the **[County or Town]** owns and operates the system in question then this individual shall be the duly designated Engineer of the **[County or Town]**. If the **[County or Town]** does not own and operate the system in question then this individual shall be an engineer in the employ of the system's owner or operator.

Article III – Administration

3.1 Administration of Ordinance

This Ordinance shall be administered by the **[County or Town]** Council. The **[County or Town]** Council shall not approve new development unless road, water, and sewer facilities are deemed to be adequate as required by this Ordinance. Nothing in this Ordinance shall prevent the **[County or Town]** Council from approving portions of a new development if the portions comply with the provisions of this Ordinance.

3.2 Jurisdiction

This Ordinance applies to all new subdivision and site plan applications for new construction received by the **[County or Town]** Council after the effective date of this Ordinance.

3.3 Developer Burden

The **[County or Town]** shall bill the developer for all costs related to the gathering of data and preparation of reports in support of the developer's application to the **[County or Town]** in relation to this Ordinance.

3.4 Final Determination of Adequate Public Facilities

3.4.1 If roads are found to be adequate subject to section 4.3 of this Ordinance, water is found to be adequate subject to section 5.2 of this Ordinance, and sewer is found to be adequate subject to section 6.2 of this Ordinance then public facilities shall be deemed adequate and the new development in question may be approved.

3.4.2 If roads are found to be inadequate subject to section 4.3 of this Ordinance or water is found to be inadequate subject to section 5.2 of this Ordinance or sewer is found to be inadequate subject to section 6.2 of this Ordinance then public facilities shall be deemed inadequate and the new development in question shall not be approved.

Article IV – Roads

All new development shall be served by an adequate network of roads.

4.1 Developer Submission

The developer of the new development in question shall be responsible for inquiring with **SCDOT** regarding the necessity for a Traffic Impact Study and submitting a copy of **SCDOT**'s response to the need for a Traffic Impact Study to the **[County or Town]** Council.

4.2 Traffic Impact Study

4.2.1 Any Traffic Impact Study performed subject to section 4.2.2 or section 4.2.3 of this Ordinance shall include in its scope those projects in the development pipeline that are geographically proximate to the new development being evaluated under this ordinance. A representative from the **[County or Town]** shall be in attendance at the meeting when the study's scope is established.

4.2.2 If **SCDOT** recommends a Traffic Impact Study based on section 4.1 of this Ordinance then the application for new development shall be held until such time as the developer completes a Traffic Impact Study reviewed by **SCDOT** and found to be in compliance with **SCDOT**'s regulations for Traffic Impact Studies, as amended from time to time.

4.2.3 If the **[County or Town]** Council adopts a resolution expressing concern with the traffic-related impacts of new development, then the application for new development shall be held until such time as the developer completes a Traffic Impact Study reviewed by the **[County or Town]**'s duly designated engineer and found to be in compliance with **SCDOT**'s regulations for Traffic Impact Studies, as amended from time to time.

4.3 Determination of Roads Adequacy

4.3.1 If a Traffic Impact Study subject to section 4.2.2 or section 4.2.3 of this Ordinance is not required, then roads shall be deemed adequate for the purpose of this Ordinance.

4.3.2 If the Traffic Impact Study performed subject to section 4.2.2 or section 4.2.3 of this Ordinance reports that the Level of Service for traffic is not F and there are no improvements necessary or recommended by **SCDOT** or the **[County or Town]** Engineer as a result of the Traffic Impact Study then roads shall be deemed adequate for the purpose of this Ordinance.

4.3.3 If the Traffic Impact Study performed subject to section 4.2.2 or section 4.2.3 of this Ordinance reports that the Level of Service for traffic is F or there are improvements necessary or recommended by **SCDOT** or the **[County or Town]** Engineer as a result of the Traffic Impact Study then roads shall be deemed inadequate for the purpose of

this Ordinance except in the case when the **[County or Town]** Council adopts a resolution affirming the idea that future road improvements set forth in a binding agreement or appearing in **SCDOT's** Capital Transportation Program will, to the maximum degree possible, alleviate congestion exacerbated by approved new development.

Article V – Water

All new development shall be served by an adequate water system.

5.1 Developer Submission

5.1.1 The developer shall submit a summary of the planned new development to the utility representative including the following:

- a. An enumeration of the unit-types and number of each unit-type planned for new development.
- b. Equivalent Dwelling Unit figures for water for each unit-type planned for new development.

5.2 Determination of Water System Adequacy

5.2.1 The utility representative shall draft and submit a report to the **[County or Town]** council addressing the adequacy of the **[County or Town]**'s water system to support new development, recommending water system upgrades, if any, necessary to support new development, recommending the **[County or Town]** council find the water system adequate or inadequate, and including a consideration of at least all of the following elements:

- a. The water system's design capacity;
- b. The water system's supply source;
- c. The water system's available capacity;
- d. The projected water needs of proposed new development to include needs for domestic consumption and fire protection;
- e. Existing storage, treatment, and pumping facilities affected by the proposed development;
- f. The impact of projects in the development pipeline on the water system's available capacity;
- g. Projects appearing in the Capital Improvements Program that will affect the ability of the water system to serve new development;
- h. Other variables found to have an effect on the ability of the water system to satisfy the projected water needs of the new development.

5.2.2 If the utility representative recommends that the water system be deemed inadequate, pursuant to section 5.2.1 of this Ordinance, then the **[County or Town]** Council shall determine the water system to be inadequate for the purposes of this

Ordinance and not approve the application for new development in question, in all but the following situations when water facilities may be deemed adequate for the purposes of this Ordinance by a simple majority vote of **[County or Town]** council:

- a. Projects in the Capital Improvements Program will, according to the utility representative, increase the water system's ability to support new development, and a binding agreement specifies that development will take place in a manner so that the start of construction for phases of development found by the utility representative to result in inadequate water facilities without water system improvements does not occur until such time as improvements specified in the Capital Improvements Program are in place.
- b. A binding agreement specifies that the developer shall fund water system improvements deemed necessary by the utility representative to provide adequate water facilities, pursuant to section 5.2.1 of this Ordinance, and the developer agrees that development will take place in a manner so that the start of construction for phases of development found by the utility representative to result in inadequate water facilities without water system improvements does not occur until the agreed upon developer funded improvements are in place.
- c. A binding agreement specifies that the **[County or Town]** and developer will jointly improve the **[County or Town]**'s water system according to recommendations made by the utility representative, pursuant to section 5.2.1 of this Ordinance, and requires the developer to develop in a manner so that the start of construction for phases of development found by the utility representative to result in inadequate water facilities without water system improvements does not occur until such time as the agreed upon **[County or Town]** and developer funded water system improvements are in place.
- d. Multiple developers submitting applications for new development under this Ordinance, including the developer whose application for new development is currently being reviewed, enter into a binding agreement containing all of the following conditions:
 1. The multiple developers party to this binding agreement shall share the costs of water system improvements deemed necessary by the utility representative to ensure adequate water facilities for new development.
 2. Each individual developer's share of the costs of water system improvements shall be calculated based on the individual developer's pro-rata share of water Equivalent Dwelling Units to be created by the multiple developers' new development, as determined by the utility representative.
 3. The individual developer's share of costs may be modified by the utility representative if circumstances other than the individual developer's pro-rata share of water Equivalent Dwelling Units are found by the utility representative to increase or decrease the cost of providing

water system improvements to the individual developer's new development.

4. The multiple developers shall agree to develop in a manner so that the start of construction for phases of development found by the utility representative to result in inadequate water facilities without water system improvements does not occur until the agreed upon developer funded improvements are in place.

5.2.3 If the utility representative recommends, pursuant to section 5.2.1 of this Ordinance, that the water facilities be deemed adequate then the **[County or Town]** Council may by a simple majority vote determine the water facilities to be adequate for the purposes of this Ordinance.

Article VI – Sewer

All new development shall be served by an adequate sewer system.

6.1 Developer Submission

6.1.1 The developer shall submit a summary of the planned new development including the following:

- a. An enumeration of the unit-types and number of each unit-type planned for new development.
- b. Equivalent Dwelling Unit figures for wastewater for each unit-type planned for new development.

6.2 Determination of Sewer System Adequacy

6.2.1 The utility representative shall draft and submit a report to the **[County or Town]** council addressing the adequacy of the **[County or Town]**'s sewer system to support new development recommending sewer system upgrades, if any, necessary to support new development, recommending the **[County or Town]** council find the sewer system adequate or inadequate, and including a consideration of at least all of the following elements:

- a. The sewer system's design capacity;
- b. The sewer system's available capacity;
- c. The projected wastewater flow to be generated by proposed new development;
- d. The impact of projects in the development pipeline on the sewer system's available capacity;
- e. Projects appearing in the Capital Improvements Program that will affect the ability of the sewer system to serve new development;
- f. The sewer system's permitted treatment capacity with the South Carolina Department of Health and Environmental Control;

- g. Other variables found to have an effect on the ability of the sewer system to accept the projected wastewater flow from new development.

6.2.2 If the utility representative recommends that the sewer system be deemed inadequate, then the **[County or Town]** Council shall determine the sewer system to be inadequate for the purposes of this Ordinance and therefore not approve the application for new development in question in all but the following cases when sewer facilities may be deemed adequate for the purposes of this Ordinance by a simple majority vote of the **[County or Town]** council:

- a. Projects in the Capital Improvements Program will, according to the utility representative, increase the sewer system's ability to support new development, and a binding agreement specifies that development will take place in a manner so that the start of construction for phases of development found by the utility representative to result in inadequate sewer facilities without sewer system improvements does not occur until the sewer improvements specified in the Capital Improvements Program are in place.
- b. A binding agreement specifies that the developer shall fund sewer system improvements deemed necessary by the utility representative to provide adequate sewer facilities, pursuant to section 5.2.1 of this Ordinance, and the developer agrees that development will take place in a manner so that the start of construction for phases of development found by the utility representative to result in inadequate sewer facilities without sewer system improvements does not occur until the agreed upon developer funded improvements are in place.
- c. A binding agreement specifies that the **[County or Town]** and developer will jointly improve the **[County or Town]**'s sewer system according to recommendations made by the utility representative, pursuant to section 5.2.1 of this Ordinance, and requires the developer to develop in a manner so that the start of construction for phases of development found by the utility representative to result in inadequate sewer facilities without sewer system improvements does not occur until such time as the agreed upon **[County or Town]** and developer funded sewer system improvements are in place.
- d. Multiple developers submitting applications for new development under this Ordinance, including the developer whose application for new development is currently being reviewed, enter into a binding agreement subject to all of the following conditions:
 - 1. The multiple developers party to this binding agreement shall share the costs of sewer system improvements deemed necessary by the utility representative to ensure adequate sewer facilities for new development.
 - 2. Each individual developer's share of the costs of sewer system improvements shall be calculated based on the individual developer's pro-rata share of wastewater Equivalent Dwelling Units to be created

by the multiple developers' new development, as determined by the utility representative.

3. The individual developer's share of costs may be modified by the utility representative if circumstances other than the individual developer's pro-rata share of wastewater Equivalent Dwelling Units are found by the utility representative to increase or decrease the cost of providing sewer system improvements to the individual developer's new development.
4. The multiple developers shall agree to develop in a manner so that the start of construction for phases of development found by the utility representative to result in inadequate sewer facilities without sewer system improvements does not occur until the agreed upon developer funded improvements are in place.

6.2.3 If the utility representative recommends, pursuant to section 6.2.1 of this Ordinance, that the sewer facilities be deemed adequate then the **[County or Town]** Council may by a simple majority vote determine the sewer facilities to be adequate for the purposes of this Ordinance.